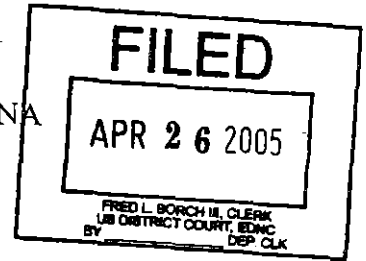


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA



PRO CON INC., *
*
Plaintiff *
*
v. *
*
LV CONSTRUCTION COMPANY, INC., *
Defendant and Third Party *
Plaintiff *
*
v. *
*
LaVALLEY BUILDING SUPPLY, INC. *
Third Party Defendant *
*

Master File No. 5:96-CV-287-BR(2)
Individual File No. 5:04-CV-945-BR ✓

**THIRD-PARTY DEFENDANT LAVALLEY BUILDING SUPPLY, INC.'S
CROSS-CLAIM AGAINST MI HOME PRODUCTS, INC.**

NOW COMES third-party defendant, LaValley Building Supply, Inc. ("LaValley"), by and through its attorneys, Desmarais, Ewing & Johnston, PLLC, and cross-claims against defendant, MI Home Products, Inc., stating as follows:

CROSS-CLAIM AGAINST DEFENDANT MI HOME PRODUCTS, INC.

1. Upon information and belief, MI Home Products, Inc. ("MI Home Products") is a corporation organized under the laws of California with a principal place of business at 650 West Market Street, Gratz, PA 17030. Through its division, Capital Windows and Doors, MI Home Products is a manufacturer of aluminum windows for commercial building markets.

2. LaValley is a New Hampshire corporation and retailer of building supplies/products. LaValley was made a third-party defendant to this action by LV Construction

Company, LLC ("LV Construction"), whereby LV Construction alleges that LaValley sold/supplied windows that were installed at the Courtyard by Marriott in Natick, Massachusetts. LV Construction further alleges that LaValley is liable for alleged water infiltration and resultant damage.

3. LV Construction has brought claims for contribution, equitable contribution-guaranties, and equitable contribution-indemnity for alleged damages relating to the window installations, which claims are denied by LaValley.

4. The subject windows at the Natick, Massachusetts Courtyard by Marriott were designed, manufactured and/or supplied by MI Home Products and/or its division, Capital Windows and Doors.

COUNT I – INDEMNITY

5. Paragraphs 1 through 4 are incorporated by reference and made a part of Count I.

6. The windows sold by LaValley for use at the Courtyard Marriott Hotel in Natick, Massachusetts were designed, manufactured, warrantied, and/or installed by MI Home Products and/or its division, Capital Windows and Doors, and were not designed, manufactured, modified or installed by LaValley.

7. MI Home Products and/or its division, Capital Windows and Doors, is expressly and/or impliedly obligated to defend and indemnify LaValley for any defects in the design, manufacturing, modification or installation of the windows at the Courtyard by Marriott in Natick, Massachusetts.

8. To the extent that windows sold by LaValley and installed at the Courtyard by Marriott in Natick, Massachusetts, contained a design or manufacturing defect, or were improperly modified or installed by MI Home Products and/or its division, Capital Windows and

Doors, and LaValley is liable to LV Construction, or any other person or entity for said defective condition or improper installation or modifications, LaValley is entitled to express and/or implied indemnity from MI Home Products and/or its division, Capital Windows and Doors, for all damages arising from said defects or improper installation or modifications

WHEREFORE, LaValley demands judgment against MI Home Products and/or its division, Capital Windows and Doors, for the full amount of LaValley's share of any damages incurred at the Courtyard by Marriott in Natick, Massachusetts, and for costs, interest and attorney's fees.

COUNT II – CONTRIBUTION - JOINT LIABILITY IN TORT

9. Paragraphs 1 through 8 are incorporated by reference and made a part of Count II.

10. Although LaValley denies that it is in any way negligent or otherwise liable to LV Construction for any damages incurred as a result of LaValley's sale of the subject windows installed at the Courtyard by Marriott in Natick, Massachusetts, if LaValley is liable to LV Construction in tort, which LaValley expressly denies, then MI Home Products and/or its division, Capital Windows and Doors, is jointly liable in tort for the damage suffered by LV Construction and LaValley is entitled to contribution from MI Home Products and/or its division, Capital Windows and Doors.

WHEREFORE, LaValley demands judgment against MI Home Products or its division, Capital Windows and Doors, for the full amount of MI Home Products and/or Capital Windows and Doors' pro rata share of the entire liability to LV Construction, together with interest and costs.

JURY TRIAL DEMANDED

Respectfully submitted,

LAVALLEY BUILDING SUPPLY, INC.

By Its Attorneys,

DESMARAIS, EWING & JOHNSTON, PLLC

Dated: 4/25/05

By: Brett J. Harpster
Brett J. Harpster MA Bar No. 629146
175 Canal Street
Manchester, NH 03101
(603) 623-5524

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Third-Party Defendant LaValley Building Supply, Inc.'s Cross-Claim Against MI Home Products, Inc. was this day forwarded to counsel of record (see attached Service List).

Brett J. Harpster
Brett J. Harpster

SERVICE LIST

For Pro Con, Inc.: James E. Harvey, Jr. O'Malley and Harvey, LLP Two Oliver Street Ninth Floor Boston, MA 02108-4908	For Dryvit: Mark W. Freel Edwards & Angell 2800 Financial Plaza Providence, RI 02903
For Sto Corp: James M. Campbell Kathleen M. Guilfoyle Nicholas Kosiavelon Christopher R. Howe Campbell Campbell Edwards & Conroy, P.C. One Constitution Plaza Boston, MA 02129	For Pelletier's Building Supply Co., Inc.: David A. White Marc J. Tassone Davis, White & Sullivan, LLC One Longfellow Place Suite 3609 Boston, MA 02114
Robert P. Snell Law Offices of Thomas M. Niarchos 100 Summer Street Suite 201 Boston, MA 02110	Marvin K. Blount, Jr. Blount Law Firm P.O. Drawer 58 400 West First Street Greenville, NC 27834
W. Andrew Copenhaver Womble, Carlyle, Sandridge & Rice P.O. Drawer 84 Winston-Salem, NC 27102	Everette L. Doffermyre Doffermyre, Shields, Canfield, Knowles & Devine 1355 Peachtree Street Suite 1600 Atlanta, GA 30309
H. Arthur Edge III Edge & Collins, P.C. 505 North 20 th Street Financial Center, Suite 1111 Birmingham, AL 35203	Gary K. Shipman Shipman & Associates, LLP 11 South Fifth Avenue Wilmington, NC 28401
For Bootz, Inc.: John J. Jarosak, Esq. Litchfield Cavo 6 Kimball Lane, Squire 110 Lynnfield, MA 01940	William Burke, Esq. Burke, McMenimen & Payton, P.C. 35 India Street Boston, MA 02110

For A&M Roofing and Sheetmetal Co. Inc.: James W. Murphy, Esq. P.O. Box 1327 Sherborn, MA 01770	For All Temp HVAC Corporation: George R. Moore, Esq. Devine, Millimet & Branch, P.A. 111 Amherst Street Manchester, NH 03101
President or Chief Financial Officer Apex Metal Roofing 39 Eastern Ave. Northampton, MA 01060	For Greenwood Industries, Inc. Warren H. Brodie, Esq. 40 Grove Street, Suite 220 Wellesley, MA 02482-7702
For Excel Mechanical, Inc.: Christopher B. Betke Ryan, Coughlin & Betke, LLP 175 Federal Street Boston, MA 02110	For Lemco, Inc.: Bruce R. Fox, Esq. Nicholle R. Proulx, Esq. 27B Midstate Office Park Auburn, MA 01501
For Prime Roofing Corp.: Terrance J. Hamilton Casner & Edwards, LLP 303 Congress Street Boston, MA 02210	William L. Keville, Jr., Esq. Melick, Porter & Shea, LLP 28 State Street Boston, MA 02109-1775
For Quality Insulation, Inc.: Sean Lowery Risk Manager Masco 612 River Road Fairhaven, NJ 07704	For MI Home Products, Inc.: Ralph J. Cafarelli, Esq. Black, Cetkovic & Whitestone 200 Berkley Street Boston, MA 02116
For General Electric Company: David A. Barry, Esq. John G. O'Neill, Esq. Sugarman, Rogers, Barshak & Cohen, P.C. 101 Merrimac Street Boston, MA 02114-4737	